IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1323 of 1986

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JOKHUSING HARGOVINDSING - Applicant(s)

Versus

DINESH JABURAM & 5 - Opponent(s)

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Appearance :
MS VARSHA BRAHMBHATT for the Petitioner

MR NITIN N PANDYA for Respondent No(s).: 1 - 1.
RULE UNSERVED for Respondent No(s).: 2, 3, 5,6.
SERVED BY AFFIX.-(R) for Respondent No(s).: 4.
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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 14/07/2005

ORAL JUDGMENT

Since the demise of the learned advocate Mr.S.D.Patel appearing for the petitioner, intimation was sent to the petitioner which has been returned

“unserved”. The respondents are also not served till the date. As the Revision Application is pending for almost 20 years and the whereabouts of the petitioner are not known, by order dated 7th July, 2005, the learned advocate Ms.Varsha Brahmbhatt had been appointed to appear for the petitioner and to assist the Court.

Heard Ms.Brahmbhatt.

Feeling aggrieved by the judgment and order dated 30th January, 1986 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.301/1980, the appellant (plaintiff in H.R.P. Suit No.1919/1976) has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, **"the Rent Act"**).

The petitioner instituted the aforesaid H.R.P. Suit No.1919/1976 in the Court of Small Causes, Ahmedabad for recovery of suit land from the respondents-defendants. According to the plaintiff he was in possession of the land situated outside Gomtipur-gate at Ahmedabad. He had

retained part of the land for his personal use. The remaining land was leased to the defendant no.1 for a monthly rent of Rs.70=00. It was agreed that the defendant no.1 should construct rooms and shops on the suit land for his personal use. The defendant no.1 had constructed 3 shops and 2 rooms on the said land. Of the said 3 shops and 2 rooms he had unlawfully sublet 2 rooms and 2 shops to the defendant no.2. The defendant no.2 sublet the said 2 rooms and 2 shops to the defendants nos.4,5 and 6. The plaintiff sought decree for possession on the grounds that the defendant no.1 was a tenant in default; that he was not ready and willing to pay the rent and that he had committed breach of the conditions of the tenancy. The suit was contested by the defendant no.1 by written statement Exh.26. He denied that the plaintiff was his landlord or that the suit land was leased to the defendant no.1 by the plaintiff. According to the defendant the whole land belonged to one Lalbhai Fakirbhai; that it was a waste land and that the defendant no.2 had constructed the shops and the rooms; that he had sold 2 rooms to the defendant no.2 and had let out one room to the defendant no.3. He claimed that he had become the owner of the suit land by adverse

possession.

The learned trial Judge, by judgment and order dated 26th March, 1980, held that the whole land belonged to one Lalbhai Fakirbhai; that the plaintiff had failed to prove that he had taken the land from the said Lalbhai Fakirbhai on rent as alleged or that he had leased the suit land to the defendant no.1 as alleged. The learned trial Judge was of the opinion that the plaintiff had failed to establish landlord and tenant relationship. The suit was accordingly dismissed. Feeling aggrieved, the plaintiff preferred Civil Appeal No.301/1980 before the Appellate Bench. The Appellate Bench, by impugned judgment and order, confirmed the finding recorded by the trial Court and dismissed the Appeal. Therefore, the present Revision Application.

Ms.Brahmbhatt has submitted that the Courts below have erred in appreciating the evidence on record. She has submitted that the defendant no.1 used to pay rent to the plaintiff and the plaintiff used to issue receipts for the same. The counter-foils of the rent receipts had been produced by the plaintiff at Exhs.62 and 63. She has also submitted that in the reply to the suit notice

(Exh.58), the defendant no.1 did admit that he was the tenant of the plaintiff. Nevertheless, the Courts below did not believe the same and that the defendant no.1 had sublet the rooms and shops to the defendants nos.2 to 4 as alleged. She has submitted that the Courts below have erred in not believing the aforesaid documentary evidence and in holding that the defendant no.1 was not the tenant of the plaintiff.

I am unable to agree with Ms.Brahmbhatt. The counter-foils did not bear the signature of the defendant no.1. The reply Exh.58 was denied by the defendant no.1 and the plaintiff had failed to prove the signature on reply Exh.58. Such documentary evidence could not have been relied upon to prove the relation of landlord and tenant.

In view of the aforesaid concurrent finding recorded by both the Courts below no interference is warranted. The Revision Application is dismissed. Rule is discharged. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)

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